

Iowa Department of Natural Resources  
Environmental Protection Commission

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**ITEM**

**DECISION**

**TOPIC**

For Adoption. Amendments to Chapter 135, Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks

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The Department presents these rules for adoption and filing by the Commission. The Notice of Intended Action was published as ARC 6596B in the February 13, 2008 issue of the Iowa Administrative Bulletin. These rules incorporate into the underground storage tank (UST) "risk-based corrective action" (RBCA) rules a new groundwater transport model for which there is broad support. The current RBCA process relies almost exclusively on groundwater transport models to predict risk to "receptors" such as public and private wells, enclosed spaces, surface water bodies, and plastic water lines. Any receptor which falls outside the actual and modeled plume is considered not at risk. These amendments establish a special "public water supply well assessment" policy and procedure for assessing risk to public water supply wells which fall outside the actual or modeled plume and does not rely solely on the groundwater transport model to predict risk. The new assessment policy takes into account numerous other variables such as well depth and construction, radius of influence of a pumping well, hydrogeologic separation, vertical movement of groundwater and other factors.

The rules also incorporate some policies and practices that are not particularly controversial. These include the practice of developing corrective action plans through a collaborative process involving the Department staff, owners and operators, groundwater professionals and funding sources. The rules clarify that when owners and operators agree to a plan which is formalized in a memorandum of agreement, failure to implement the agreement is considered a violation of a rule. The rules also require sampling of all drinking and non-drinking water wells within 100 feet of an actual plume regardless of whether the well falls outside a modeled plume.

Three public hearings were conducted after publication of the notice. The Department appeared before the Administrative Rules Review Committee (ARRC) on March 7, 2008 and again on May 13, 2008. In response primarily to some stakeholder concerns about the public water supply well assessment policy and procedure, the ARRC requested and the Department agreed after the March meeting to reconvene a stakeholder group to continue to work on resolving issues. The ARRC also requested and the DNR agreed to complete what was referred to as an "informal" regulatory analysis. The Department formed a "core stakeholder group" that consisted of representatives from the Iowa UST Fund, the Petroleum Marketers Management Insurance Company (PMMIC), Petroleum Marketers and Convenience Stores of Iowa (PMCI), Groundwater Professionals of Iowa, the Iowa Association of Water Agencies (IAWA), in addition to the Department. Other individual stakeholders actively participated as well.

Although it is not fair to say consensus was achieved, the Department felt there was a measure of acceptance of the Department's proposal to consider a more flexible risk assessment method and not rely solely on the groundwater transport model to assess risk to public water supply wells when they fall outside the modeled plume. Comments before the ARRC on May 13, 2008 indicate there is broad support for the rules from the public water supply well community but there may still be concerns and objections from the regulated community and funding sources.

The rules require that the owner/operator's groundwater professionals conduct at a minimum a desktop risk assessment of all public water supply wells within 2,500 feet of the UST source area. This is intended as a "screening" assessment. The rules attempt to allocate the burden of assessing the risk of impact to public water supply wells which fall outside the modeled plume by allowing the owner/operator's groundwater professional to conduct an analysis of risk based on available information and make a risk recommendation to the Department. If the Department disagrees with the groundwater professional's risk recommendation, the burden shifts to the Department to make the case that there is sufficient hydrogeologic connection and risk to the public water supply wells to shift the burden of assessment back on the owner/operator. The rules also provide an opportunity for the owner/operator's groundwater professional to recommend screening out public water supply wells which fall within 2,500 feet of the UST source at Tier 1 (at Tier 1 the soil and groundwater plume has not been defined).

The Department believes it has conducted a thorough review of the policy options to address risk to public water supply wells and that stakeholders have been given a fair opportunity to provide comment and suggest policy options. Further review would not likely serve any productive purpose. The current rules represent a fair and balanced approach to risk assessment of public water supply wells.

The Department is recommending that the assessment rules be reviewed after two years if there is a request by the regulated community.

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